

ALL AT SEA

The Policy Challenges of Rescue, Interception, and Long-Term Response to Maritime Migration

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CHAPTER I

MARITIME MIGRATION A Wicked Problem

By Kathleen Newland

Introduction

As the world's migrant and refugee populations climbed past post-World War II records in 2015,¹ the most dramatic images of migration were of those who travel by sea: a ship on fire within half a mile of land dooming 366 of its 521 passengers; boats built to hold 50 crammed to standing-room-only with five times that many; two sisters, champion swimmers, towing their foundering boat to safety; a little boy's body lying facedown in the sand.² Just a tiny proportion of the world's international migrants travel by sea without permission to enter their intended destination country, on vessels that are not authorized to enter that country's ports. This double irregularity constitutes the bulk of what is known as irregular

1 United Nations Department of Economic and Social Affairs (UN DESA), *International Migration Report 2015: Highlights* (New York: United Nations, 2016); United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2015* (Geneva: UNHCR, 2016), 5.

2 See, for example, Zed Nelson, "Lampedusa Boat Tragedy: A Survivor's Story," *The Guardian*, March 22, 2014; UNHCR Regional Office for South-East Asia, "Mixed Maritime Movements in South-East Asia—2015," accessed August 9, 2016; Heather Saul, "Yusra Mardini: Olympic Syrian Refugee Who Swam for Three Hours in Sea to Push Sinking Boat Carrying 20 to Safety," *The Independent*, August 5, 2016; Helena Smith, "Shocking Images of Drowned Syrian Boy Show Tragic Plight of Refugees," *The Guardian*, September 2, 2015.

maritime migration,³ which receives an outsize share of attention from the media and politicians (and therefore the public) and absorbs significant shares of the financial and human resources devoted to making and implementing migration policy.

Unauthorized migration by sea is exceptionally dangerous. Some land routes—those that cross deserts or regions with high levels of violent crime—also present grave natural or manmade threats to migrants, but deaths rarely occur *en masse*. In contrast, it is not uncommon for one incident at sea to result in hundreds of fatalities, and deaths in the single and double digits have become so common that they are no longer newsworthy. In the Mediterranean alone, more than 3,700 migrants were lost at sea in 2015, and another 3,165 in the first eight months of 2016.⁴ The global total of migrant deaths at sea is difficult to calculate; an unknown number of boats sink without leaving a trace of their passengers. By one estimate, for every corpse that washes up on the shores of developed countries, at least two others are never recovered.⁵

Most unauthorized maritime migration involves “mixed” flows—that is, groups of people traveling along the same routes and using the same forms of transportation, but with different motivations and needs. State authorities often find it difficult to distinguish between refugees, traveling to seek international protection, and migrants traveling in search of a better life, which they may define in terms of economic opportunity, access to education, reunification with relatives, or some other desired outcome. A state’s obligation to refugees and other people

3 “Irregular maritime migration” usually refers to this double lack of permission to enter a country’s territory; in this context, the Migration Policy Institute (MPI) prefers the more specific terms “unauthorized migrants” traveling on “unauthorized vessels.” Some unauthorized migrants are detected as they go through the immigration and customs procedures at seaports after arriving on regularly scheduled commercial or private vessels (or, in rare cases, after being rescued from shipping containers). They may be refused permission to enter because of inadequate documentation, criminal records, public-health concerns, or other issues. Meanwhile, in most developed countries, the majority of unauthorized migrants have entered the country legally but subsequently overstay or abuse the terms of their visas. This study does not examine these phenomena, but focuses on unauthorized migrants traveling on unauthorized vessels.

4 Tara Brian and Frank Laczko, eds., *Fatal Journeys Volume 2: Identification and Tracing of Dead and Missing Migrants* (Geneva: International Organization for Migration, 2016), 5; International Organization for Migration (IOM), “Migration Flows – Europe: Recent Trends,” updated August 28, 2016.

5 Leanne Weber and Sharon Pickering, *Globalization and Borders: Death at the Global Frontier* (Basingstoke, UK: Palgrave Macmillan, 2011).

legally eligible for protection is vastly different from its obligations to other migrants. The 148 states that are party to the 1951 United Nations Convention on the Status of Refugees or its 1967 Protocol are bound by the obligation of nonrefoulement, that is, a prohibition from expelling or returning a refugee back to a territory where his or her life or freedom would be threatened.⁶ In fact, some experts argue that nonrefoulement has achieved the status of customary law and is binding even for states that are not party to the 1951 Convention or 1967 Protocol.⁷ While international law—and most national laws—draw a bright line between refugees and other migrants, the difference in reality is not so clear-cut.

Unauthorized maritime migration troubles the public imagination and resonates in the broader policy debate on many levels. Boats heading to shore without notice conjure up echoes of “invasion” that threaten to undermine national sovereignty and challenge existing legal regimes. Then there are the heart-rending images of suffering and death when boats founder and their passengers drown—occasionally in full view of cameras that relay the pictures around the world.

Policies that aim to address unauthorized maritime migration are rife with unintended consequences. In many cases, deterrence measures raise concerns that refugees’ claims for international protection are not being adequately considered. Policy measures may also trap migrants and refugees in a dangerous limbo between their origin and intended destination, in the hands of ruthless smugglers or in indefinite detention. For example, the Thai government crackdown on smuggling in the spring of 2015 led smugglers to abandon migrants at sea, leaving thousands adrift without adequate food or water (see Chapter 3). Intensified measures to deter or intercept unauthorized boats have taken most migrant journeys out of the hands of amateurs and placed them firmly in the hands of professionals, many of whom are part of organized-crime networks that make huge profits from people smuggling. Attempts by individual states to prevent unauthorized arrivals have sometimes soured their relations with neighboring countries and countries of origin or transit. Perhaps the most extreme unintended consequence is that more humane policies toward boat arrivals may encourage unauthorized journeys and result in even more deaths at sea.

6 United Nations General Assembly, “Convention Relating to the Status of Refugees,” July 28, 1951.

7 See, for example, Guy S. Goodwin-Gill, *The Refugee in International Law*, 2nd edition (Oxford, UK: Oxford University Press, 1996).

Reflecting the fear and emotion that it inspires, maritime migration is often met with crisis-driven responses. The focus of policy over the past ten to 20 years has shifted, in different contexts, between rescue (followed by processing of asylum or immigration claims) and deterrence.

President Silvio Berlusconi of Italy, for instance, controversially negotiated the involuntary return of unauthorized maritime migrants with the Gaddafi regime in Libya in 2009,⁸ a practice that continued until the European Court of Human Rights ruled that such returns, with no asylum screening, violated European law (see Chapter 2).⁹ In October 2013, under a different government and following a very visible disaster in which 366 people drowned within half a mile of the Italian island of Lampedusa, Italian leaders instituted a massive search-and-rescue mission in the Mediterranean that brought future survivors to Italian territory.

Australia offers another example of policy volatility. In 2001 the Australian government put a strict denial-and-deterrence regime in place. When the opposition Labor Party came to power in 2008, it removed many elements of this regime, only to reinstate most of them between 2011 and 2013, while also developing new initiatives (such as supporting the resettlement of refugees in other countries of the Asia-Pacific region). After the 2013 general election, a new administration reinforced the strict deterrence regime with a zero-tolerance policy for unauthorized boat arrivals (see Chapter 5).

I. Territorial Asylum and Its Discontents

The seemingly intractable problem of unauthorized maritime migration points to a deep fault line in the international migration and asylum regime. The territorial basis of asylum means that refugees must enter the territory of a state other than their own in order to claim protection. International law grants everyone the right to leave his or her country, but does not establish a corresponding right to enter another country without the consent of that country's authorities. The measures that capable states have taken to prevent the entry of unauthorized migrants make it extremely difficult for refugees to

8 EurActiv, "Italy's Immigration Deal with Libya Sparks Uproar," EurActiv, June 11, 2009.

9 *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09 (European Court of Human Rights, 2012).

access their territory—and these are the states that offer the best prospect not only of protection but also of a secure and even prosperous future. For many refugees in more easily accessible but relatively poor countries of first asylum, life is extremely precarious. Although they have been granted international protection, many choose to move on in hopes of a better life, only to find that all legal avenues of entry to another country are closed to them.

For most asylum seekers, the only way to enter any state other than their own is through unauthorized means, including unauthorized travel by boat; there are no established international mechanisms to apply for protection as a refugee while still within one's own country (although some states have at times made special, usually temporary, provisions for in-country processing of refugee claims). In fact, the 1951 Convention's definition of a refugee specifies a person who is *outside* his or her country.¹⁰

However, once a refugee has managed to reach the territory of another state, the state in question not only is obliged to avoid refoulement, but is also enjoined from penalizing refugees for entering illegally.¹¹ Not surprisingly, many highly motivated migrants who do not qualify for refugee protection apply for asylum nonetheless, in the hope of being allowed to stay in their intended country of destination. The difficulty of determining refugee status—and the volume of asylum claims—overburdens refugee-determination systems in even the world's richest countries.

After untold hardships that may include assault and extortion by smugglers, prolonged detention, and extremely long waiting periods for the processing of their claims, people with recognized refugee status often still struggle to survive. Many countries of first asylum are themselves desperately poor and unable to provide adequately for refugee arrivals; 86 percent of the refugees under the United Nations High Commissioner for Refugees (UNHCR) mandate worldwide are hosted by developing countries.¹² Even middle-income host countries, such as Turkey, stagger under the weight of huge numbers of long-term refugees. Relatively few countries of first asylum allow refugees to work legally. Unsurprisingly, many refugees opt to leave them in search of greater physical and economic security. But other than for the tiny proportion (less than 1 percent) of refugees who are selected for resettlement in a

10 United Nations General Assembly, "Convention Relating to the Status of Refugees," Article 1.

11 Ibid, Article 31.

12 UNHCR, *Global Trends*.

third country, the international mechanisms available to assist refugees' onward movement are extremely limited. Meanwhile, the lines between the refugee and the "economic migrant" have been blurred beyond easy distinction. Refugees move on from first-asylum countries for economic reasons, and many so-called economic migrants flee from mortal threats.

II. Who's Who

Of the various types of unauthorized movement, maritime migration is particularly difficult to address. This is in large part because of the sheer number of actors—of different types and from different states—who are involved in the process:

- **National authorities.** Prominent among the state actors responsible for preventing unauthorized maritime migration are immigration agencies (in many cases located within home affairs or justice ministries), border protection agencies (coast guards and land-based agencies), departments of foreign affairs, departments of defense, armed forces (in particular naval forces), and national search-and-rescue operations. Legislatures, executives, and courts establish the laws and policies that frame state actions.
- **Private-sector interests.** Commercial actors, in particular the shipping industry but also fishing vessels and even pleasure boats, are often on the frontlines of maritime rescue.
- **International organizations.** Several are central to maritime migration operations: the International Maritime Organization (IMO), is the custodian of the *Law of the Sea*; UNHCR is responsible for ensuring the protection of refugees and asylum seekers; the United Nations Office for Drugs and Crime (UNODC) coordinates state efforts to combat international organized crime, including human trafficking; and the International Organization for Migration (IOM) provides migration advice and services to states and, at the request of states, to migrants. UNHCR and other multilateral bodies, such as the United Nations Children's Fund (UNICEF) and the United Nations Office of Legal Affairs, also play a role in specific circumstances. The Special Representative of the Secretary-General for International Migration (SRSG) seeks to manage, among other issues, the politics of the international community in relation to maritime flows.

- **Regional bodies.** The European Union (EU) border-control agency, Frontex, and other regional actors take part—and sometimes take the lead—in confronting unauthorized traffic by sea.
- **Civil-society organizations.** Many nongovernmental organizations (NGOs) defend the dignity and human rights of migrants and insist on the proper functioning of asylum systems. Some provide legal assistance and humanitarian support to migrants in transit. A small number of NGOs take direct action to rescue migrants at sea.
- **Criminal syndicates.** All over the world, criminal networks have incorporated people smuggling and human trafficking into their business lines.

At the base of this jumble of actors are the networks of migrants, intending migrants, and their families and communities in both destination and origin countries. Members of these networks have a wide range of motives for planning, assisting, and undertaking journeys that are usually expensive and often extremely dangerous.

Each of the actors in international maritime migration responds to different laws, regulations, incentives, norms, and operational standards, making for an exceptionally complex and dynamic policy environment. The debate around unauthorized maritime migration resembles the story of the blind men and the elephant.¹³ Some comprehend it through a humanitarian lens and see it primarily as a protection issue. Others consider it a national security threat, others a question of law and order, and still others an economic phenomenon. Overlaid on these views is a common political perception—in Western countries at least—of unauthorized maritime migration as a public relations disaster for governments when they appear to be unable to control their borders, thereby failing one of the fundamental tests of national sovereignty. The lens through which unauthorized maritime migration is viewed—humanitarian, national security, law enforcement, or politics—often determines the thrust of the policy response.

¹³ In the story, a group of blind men touch an elephant to learn what it is like.

Depending on which part of the creature touched, each man came away with a dramatically different description of the elephant. One grasped the trunk and said an elephant is like a snake; one the ear (a fan), one the leg (a tree), and so on. An argument ensued, and while each man was in a sense correct in a limited sense, none could give an accurate description of the whole creature.

III. Who's Where

Unauthorized maritime migration is most prevalent in waters that connect poorer regions with richer ones, particularly at times when the poorer area is experiencing armed conflict or political turmoil accompanied by repression and violence. This book offers five case studies of regions in which the sea functions not as a moat but a highway: the Mediterranean, the Bay of Bengal region, the Gulf of Aden/Red Sea, the maritime approaches to Australia, and the Caribbean.

Among these five, one of the largest and least remarked flows is that between the Horn of Africa and Yemen. The routes, dimensions, and even the direction of migration across the Gulf of Aden and Red Sea fluctuate with the course of conflicts in the region and the policies of the primary destination, Saudi Arabia. From 2010 through 2013, these waters saw more migrant crossings annually than any other region, topping 100,000 in 2011 and 2012.¹⁴ Most migrants travel from Ethiopia or Somalia to Yemen, with the aim of reaching the labor markets of Saudi Arabia or another Gulf state. As the conflict in Yemen escalated in 2014, however, people also began to cross in the other direction—both returning migrants and Yemeni refugees. This maritime region is one of the world's most dangerous, with migrants not only facing the perils of the sea journey but also armed conflict on both shores and vicious smuggling gangs. But the flows between the Horn of Africa and the Middle East are a long way from the major Western media markets and get only a fraction of the public attention given to the other four cases presented here.

Outside the five case study regions, many other notable maritime routes are used by unauthorized migrants. Maritime migration to the United Kingdom diminished markedly since the Channel Tunnel connected the island nation with the European continent by rail. Nonetheless, unauthorized migrants still travel by sea, either hiding themselves in trucks on cross-channel ferries or being concealed by smugglers in shipping containers. In the French port of Calais, 7,414 migrants were arrested in the first six months of 2014 as they attempted to arrange a channel crossing.¹⁵ In August 2014, 35 migrants (including children) were found in a shipping container at Tilbury docks, Essex; one had died, and all survivors were suffering from dehydration and hypothermia. They had arrived on a container ferry from Zeebrugge, Belgium

14 UNHCR, "Record Number of African Refugees and Migrants Cross the Gulf of Aden in 2012" (press briefing, UNHCR, Geneva, January 15, 2013).

15 *The Economist*, "Migration into Europe: A Surge from the Sea," *The Economist*, August 16, 2014.

via a route that had been opened only two weeks before¹⁶—evidence of professional smugglers’ tremendous adaptability and opportunism.

Island states large and small are, obviously, likely to see a higher proportion of unauthorized migrants arriving by sea than states with land borders.¹⁷ Island territories that lie on or near major sea lanes or in close proximity to high-emigration areas are particularly vulnerable. Italy’s Lampedusa, Spain’s Canary Islands, Australia’s Christmas Island, the uninhabited Mona Isles of the U.S. Commonwealth of Puerto Rico, and France’s overseas department of Mayotte in the Mozambique Channel have all been entry points for unauthorized migrants to a greater or lesser extent at various times. They put a destination country’s territory in much closer reach of would-be migrants. For destination countries, the cost of patrolling waters around distant possessions is high. Australia has gone so far as to “excise” its island territories, including Christmas Island, from its “migration zone,” so that people who reach these territories without permission cannot claim asylum.¹⁸ The United States is said to be considering the same for the uninhabited Mona Islands to discourage smugglers from depositing their passengers there, where they can claim asylum or (in the case of Cuban migrants) claim the benefits of a U.S. policy that grants automatic legal status to Cubans who reach U.S. land borders.¹⁹

IV. The Legal Framework of Maritime Rescue and Interception

Maritime migration differs crucially from movement by land or air in that people who move on the high seas are not constantly within the jurisdiction of a state. A migrant cannot board or land on a scheduled flight except at an airport located on the territory of a state, nor can

16 BBC News, “Tilbury Docks: Man Dies After 35 Found in Container,” BBC News, August 16, 2014.

17 For most countries, the largest numbers of unauthorized migrants arrive by air with temporary visas and overstay or abuse the terms of their visas.

18 People who enter Australian territory via an excised zone cannot make a valid application for a visa without special permission from the Minister for Immigration and Border Protection.

19 Author communication with a U.S. Department of Homeland Security (DHS) official, Washington, DC, June 2014. Cuban migrants who reach U.S. territory are automatically paroled into the United States, whereas those intercepted at sea are returned to Cuba or to the U.S. Naval Station at Guantánamo for refugee processing.

they leave one state by land without entering the territory of another. People traveling in international waters, however, enter a realm in which the jurisdiction of states is less comprehensive and much easier to avoid. This reality, in contrast to the increasingly tight control that many states exercise over their airports and land borders, is one of the factors driving unauthorized maritime migration.

Aboard a ship, passengers and crew are under the jurisdiction of the shipmaster, who is, at least in theory, under the jurisdiction of the state whose flag the ship flies (the flag state). But some countries offer flags of convenience for a price (including land-locked Mongolia),²⁰ and some make no attempt or have no capacity to enforce their own laws or international treaties, including the *Law of the Sea*. It is often difficult to contact the authorities of such a state to confirm jurisdiction when such a vessel is challenged on the high seas for suspected smuggling or trafficking.

Some boats that carry unauthorized migrants are unflagged, unregistered, or operate under false pretenses with a flag they have no right to bear. These vessels are effectively stateless and answer to the law of no state even in theory. Many small craft, such as fishing vessels and private yachts, are unregistered but are still entitled to carry the flag of a state. This can make it very difficult to identify the state responsible for the vessel.

A body of treaty law negotiated among states brings the rule of law to the high seas, which are outside the law of any one state. The obligation to rescue people regardless of their nationality, legal status, or the circumstances in which they are found is codified in the widely ratified 1974 Convention for the Safety of Life at Sea (SOLAS), the 1979 Convention on Maritime Search and Rescue (SAR), and the Protocol of 1988 relating to SOLAS. (But the tradition of rescue at sea long predates the modern conventions that lay out the obligations of flag states and shipmasters to come to the aid of persons in distress.) SAR divides the world's seas into search-and-rescue regions and obligates state parties to cooperate in patrolling them and summoning rescue operations when needed. Search-and-rescue missions alert nearby ships to the presence of a vessel in distress, and those notified are obliged to do their best to rescue people in danger, including by taking them on board (embarking them) if it is necessary and can be done safely.

²⁰ The International Transport Workers' Federation (ITF) identifies 35 states that register ships under flags of convenience. See ITF, "Flags of Convenience: Avoiding the Rules by Flying a Convenient Flag," accessed September 10, 2016.

The most comprehensive treaty on maritime law, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), also specifies the obligation to rescue and assist people in peril on the sea. UNCLOS Article 98(1) reads: “Every state shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need for assistance, in so far as such action may reasonably be expected of him.”²¹

In addition to rules on rescue, UNCLOS provides for the possibility of interception and interdiction of ships that are believed to pose a threat to peace and security. Known as “the right of visit,” Article 110 of the treaty creates an exception to the principles, also codified in the treaty, of noninterference with ships, freedom of navigation on the high seas, and the sole jurisdiction of the flag state. A suspect ship may be inspected by authorities from a state-operated vessel (such as a warship or a coast guard vessel) with the permission of the flag state, if that state can be determined. If the ship is found to pose no threat, compensation must be provided. UNCLOS does not specifically mention migrant smuggling as a ground for exercising the right of visit, but “smuggling and trafficking of persons at sea” is among the threats to maritime security specified by the United Nations Office of Legal Affairs.²² In addition, the Migrant Smuggling Protocol to the United Nations Convention against Organized Crime gives states the right to board and search ships suspected of migrant smuggling with the permission of the flag state, and to “take appropriate measures” in such cases.²³

The legal framework for maritime migration goes far beyond the *Law of the Sea*.²⁴ When passengers are rescued at sea, or the vessel on which they are traveling is intercepted, other bodies of law may come into play: refugee law prohibits the return of refugees to a state where they would face danger to life and liberty, human-rights law proscribes arbi-

21 United Nations General Assembly, “United Nations Convention on the Law of the Sea,” Article 98 (1), December 10, 1982.

22 United Nations Secretary-General, *Oceans and the Law of the Sea* (New York: United Nations, 2008).

23 United Nations General Assembly, “Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime,” Article 8.

24 See Efthymios Papastavridis, *The Interception of Vessels on the High Seas: Contemporary Challenges to the Legal Order of the Oceans* (Oxford, UK: Hart, 2013).

trary detention, and transnational criminal law enjoins the obligation to combat the smuggling and trafficking of persons. The intersection of these different bodies of law, the laws of individual states, and regional statutes creates an intricate legal structure with plentiful opportunities for differing interpretations.

The complexity of the legal framework embodied in international treaty law is multiplied by widely differing national and, in the case of the European Union, regional jurisprudence on unauthorized maritime migration. For example, the U.S. Supreme Court ruled in 1993 that neither the 1967 Protocol to the Refugee Convention nor the U.S. domestic legislation implementing the Protocol apply to actions taken by the U.S. Coast Guard on the high seas, and therefore that Haitians intercepted outside U.S. territorial waters could be returned directly to Haiti without first determining if they qualify for refugee status.²⁵ The European Court of Human Rights, on the other hand, ruled in 2012 that European flag states are responsible for the protection of migrants picked up by state vessels even if the interdiction takes place in international waters—thus confirming that Italy’s pushbacks of migrants to Libya were a violation of the European Charter of Fundamental Rights.²⁶ As a result of this decision, Frontex adopted new rules for its sea operations that take into account the nonrefoulement obligations of EU Member States.²⁷

In 2011, the High Court of Australia declared the Australian government’s plan to transfer asylum seekers to Malaysia for processing invalid on the grounds that Malaysia is not legally bound to provide protection for asylum seekers, access to effective procedures, or refugee protection since the agreement between the two countries was not legally binding and Malaysia is not a signatory to the 1951 Refugee Convention or its 1967 Protocol.²⁸

UNHCR takes the position, argued in *amicus curiae* briefs in several court cases, that the obligations incurred under the Refugee Convention apply wherever the authorities of a state have jurisdiction or exercise “effective control” of a person, whether that person is in the

²⁵ *Sale v. Haitian Centers Council, Inc.* 509 U.S. Reports 155 (1993).

²⁶ *Hirsi Jamaa and Others v. Italy.*

²⁷ Yves Pascouau and Pascal Schumacher, “Frontex and the Respect of Fundamental Rights: From Better Protection to Full Responsibility” (policy brief, European Policy Centre, Brussels, June 2014).

²⁸ *Plaintiff M70/2011 v. Minister for Immigration and Citizenship & Anor*, 244 CLR 144 (High Court of Australia, 2011).

territory of that state or not.²⁹ A number of states party to the Refugee Convention, such as the United States and Australia, do not take this view. The inconsistency in national jurisprudence makes it difficult to establish a consensus—whether in word or action—on the treatment of people intercepted at sea.

V. The Problem of Disembarkation

Some of the most vexatious questions surrounding maritime migration concern the disembarkation of people rescued or intercepted at sea. The maritime conventions require that states cooperate to disembark rescued people at a “place of safety” on dry land, but do not specify which port should take this responsibility. It could be the nearest port, the next port of call on the rescue ship’s itinerary (which would minimize the cost of disrupting a voyage to conduct a rescue), a port governed by the rescued people’s country of origin (unless they are claiming asylum), or a port in the territory of the flag state. Since international law gives no firm instruction on the port of disembarkation, shipmasters and states are left to exercise discretion. The Executive Committee of UNHCR has stated that rescued people should normally disembark at the next port of call—and indeed this is expected unless there is good reason to make an exception. But the committee has also recognized that the next port of call may not be the most appropriate.³⁰ Amendments to the SAR and SOLAS conventions, discussed below, have helped to clarify the issue of disembarkation procedurally, if not substantively.

Once migrants disembark and are admitted to the country where that port is located, they enter the territory of a state, which from that moment has certain obligations toward them. To some extent, these obligations depend on the international legal instruments to which the state is party, such as the United Nations Convention Relating to the Status of Refugees and the United Nations Convention against Torture. (However, as noted above, many legal experts consider nonrefoulement of refugees to be established customary international law.) These

29 See, for example, UNHCR, “Submission of the Office of the United Nations High Commissioner for Refugees – Seeking Leave to Intervene as *Amicus Curiae*” (UNHCR submissions in the High Court of Australia in the Case of *CPCF v. Minister for Immigration and Border Protection and the Commonwealth of Australia*, September 15, 2014).

30 See UNHCR, “Background Note on the Protection of Asylum-Seekers and Refugees Rescued at Sea,” Section II (31) (background note, UNHCR, Geneva, March 18, 2002).

instruments may prohibit the state from returning a rescued person to his or her country of origin. In order to determine the correct course of action, the state must have some means, direct or indirect, of determining whether a person is a refugee (or has some other protected status) and is therefore eligible for protection. In many cases, states will go to considerable lengths to avoid taking on these obligations, particularly if illegal immigration is a controversial issue in domestic political debates (where refugee status determination is often framed as a costly and burdensome process). Several high-profile incidents of rescue at sea, the most notorious of which involved the *MV Tampa* in 2001, have demonstrated this reluctance.

In August 2001, the Norwegian container ship *MV Tampa*³¹ rescued 433 asylum seekers from a boat that was sinking in international waters between Indonesia and Australia's Christmas Island in Indonesia's search-and-rescue zone. The container ship had been alerted to the incident by the Australian Maritime Safety Authority (AMSA). After the rescue, the shipmaster followed standard procedures in heading toward Indonesia (which was the next port of call), but turned back toward Christmas Island after the extreme agitation of some of the rescued passengers, who insisted on reaching Australian territory, made him fear for the safety of both the crew and the people they had rescued.

Although AMSA initially deferred to the shipmaster's judgment, the Australian government refused permission to disembark the passengers on Christmas Island and went so far as to threaten legal action against the shipmaster if he were to attempt to do so. An impasse ensued for three days as the *Tampa* waited just outside Australian territorial waters for a resolution. Indonesia (the next port of call and the point of embarkation), Australia (the nearest port), and Norway (the flag state) all refused to accept the passengers. With conditions on board deteriorating (the *Tampa* was designed and provisioned for a few dozen, not hundreds, of people), the shipmaster declared an emergency on board and moved into Australian waters. The *Tampa* was intercepted and boarded by Australian military forces and its passengers transferred to an Australian military vessel. After negotiations between the Australian government and the government of Nauru, the passengers were transferred to Nauru, where UNHCR agreed to oversee the process of refugee determination and resettlement procedures. Eventually most of the passengers rescued by the *Tampa* were resettled as refugees in New Zealand, Australia, and several other countries.

31 See Ernst Willheim, "MV Tampa: The Australian Response," *International Journal of Refugee Law* 15, no. 2, Oxford University Press (2003): 159-91.

In the aftermath of the *Tampa* incident, the IMO Member States adopted amendments to SOLAS and SAR. The purpose of the amendments, which were adopted in 2004 and came into force in 2006, is to match the shipmaster's obligation to render assistance with a corresponding obligation on the part of states to "coordinate and cooperate" to allow the shipmaster to hand over the responsibility of caring for people rescued at sea and allow these people to disembark in a safe place.³² The state that is in charge of the search-and-rescue zone in which a vessel in distress is detected is expected to take responsibility for ensuring that such cooperation and coordination take place. Ideally, the people rescued will be brought to a safe point for disembarkation with the least possible disruption to the itinerary of the rescuing ship—of particular importance to commercial vessels. UNHCR and IMO have also jointly issued guidelines for the implementation of the amendments.³³ But while the procedures to be followed after a rescue-at-sea operation have been clarified, the actual site of disembarkation often remains contentious.

When states cannot agree on which port should be used—and occasionally when passengers refuse to disembark at an agreed port—the rescuing ship is forced to delay the progress of its journey, at considerable cost and inconvenience to its owners, master, and crew. The chance that disembarkation procedures will be contentious and drawn out, or that the crew of a rescuing vessel will be prosecuted for assisting illegal immigration (as happened in Italy in 2007 when the crew of a Tunisian fishing boat landed a group of rescued migrants on Lampedusa³⁴), creates the incentive for commercial ships to shirk their duty of rescue and leave people in peril. In one instance in 2007, shipwrecked migrants were left clinging to a tuna pen in the Mediterranean for three days. Their vessel had foundered in the Libyan search-and-rescue area, and Malta—the flag state of the ship towing the tuna pen—refused to pick them up.³⁵ They were eventually rescued by an Italian naval vessel.

Migrants—including the survivors of the 2013 shipwreck off the Italian island of Lampedusa that resulted in the death of 366—often tell of being ignored by multiple merchant ships or fishing boats before being rescued. This is the most serious consequence of states' failure to

32 International Maritime Organization (IMO), *Rescue at Sea: A Guide to Principle and Practice as Applied to Migrants and Refugees* (London: IMO, 2004).

33 Ibid.

34 Peter Popham, "Tunisian Fishermen Face 15 Years' Jail Time in Italy for Saving Migrants from Rough Seas," *The Independent*, September 19, 2007.

35 Consiglio Italiano per i Refugiato (CIR), *Report Regarding Recent Search and Rescue Operations in the Mediterranean* (Rome: CIR, 2007).

cooperate on the issue of disembarkation. And if commercial vessels traveling through sea lanes known to be used by migrants turn off their communications equipment to avoid being caught up in migrant-rescue dramas, others will also be lost at sea—fishermen, yachtsmen, and merchant seamen. To a worrying extent, states' lack of cooperation on this issue threatens the rescue-at-sea regime for everyone.

The interception of migrants at sea is surrounded by similar problems. An important difference, however, is that the main purpose of interception is to prevent unauthorized migrants from disembarking at their intended destination. The intercepting authority, typically an agent of the intended destination state, takes control of a boat in order to prevent its onward movement, return it to the port of embarkation, or compel it to alter course. But if the boat is unseaworthy, what started as an interception may become a rescue, and the intercepting vessel may have to take the passengers and crew aboard.

UNHCR and many legal scholars take the view that by voluntarily taking control of a boat that is still seaworthy, the intercepting authority acquires the same obligations that it would have if it had landed the passengers on its territory (especially if the interception takes place within its territorial waters). But some states, including the United States and Australia, reject the interpretation that interception of a vessel at sea means they must provide asylum to any refugees found to be among the passengers on board. Rather, they construe their obligation narrowly, as a requirement not to take actions that result in refugees being returned to a territory where their lives or freedom would be in danger. Denying people the ability to reach their intended destination or moving them to a third state, even without their consent, does not amount to refoulement.³⁶

VI. The Politics of Unauthorized Maritime Migration

The domestic politics surrounding unauthorized maritime migration are toxic in several countries where unauthorized maritime migration—because of its visibility and drama—has at certain times become a proxy for a broader debate on migration in general and illegal

³⁶ Many legal scholars agree, if reluctantly, that “the simple denial of entry of ships to territorial waters cannot be equated with breach of the principle of nonrefoulement.” See Goodwin-Gill, *The Refugee in International Law*, 166.

immigration in particular. Wedge politics, enabled by the treatment of boat arrivals in elements of the popular media, fan public disquiet by invoking images of invasion and criminality. The fact that Australia was facing a general election at the time of the *Tampa* incident undoubtedly added to the heat of the domestic debate surrounding the event within the country and of the exchanges with the other countries involved. Similarly, President Clinton's 1992 refusal to lift the interception program in the Caribbean (by which Haitians were turned back wholesale, without review) was said to have derived from the political backlash he endured as governor of Arkansas during the "Mariel boatlift" of Cubans in 1981, when Cubans sent to Arkansas' Fort Chaffee for processing broke out of the base and rioted.³⁷ Right-wing politicians throughout Eastern and Central Europe benefitted from public resistance to the arrival in their countries of hundreds of thousands of migrants who had traveled through Greece and up through the Balkans in 2015 and 2016. By contrast, approval ratings for German Chancellor Angela Merkel plummeted in the year after she opened Germany's borders to refugees and migrants stranded in Austria (September 2015 to September 2016), and her party lost the state elections in her own constituency, coming in behind a far-right, anti-immigrant party.³⁸

In some cases, domestic politics works in favor of boat arrivals—or at least some of them. For example, the legacy of the Cold War and the continuing power of the Cuban lobby in the United States sustain the extraordinary "wet foot/dry foot" policy that permits Cuban maritime migrants who successfully reach dry land in U.S. territory to remain and quickly adjust to permanent resident status (see Chapter 6). At the same time, Cubans intercepted at sea are returned to Cuba for in-country processing or, if they wish to claim asylum, taken to the U.S. naval station in Guantánamo Bay³⁹ for refugee status processing; if found to be refugees, the U.S. government seeks a third country to accept them for resettlement.

Unauthorized maritime migration is often portrayed as an artefact of the international asylum regime when, in fact, it is also one of the major threats to the regime. Both domestic politics and good relations among states demand that the institution of asylum serves the protection purpose for which it was intended and does not act as a back door

37 Justin Wm. Moyer, "The Forgotten Story of How Refugees Almost Ended Bill Clinton's Career," *Washington Post*, November 17, 2015.

38 Deutsche Welle, "Politicians Blame Merkel's Refugee Policy for Defeat in Regional Elections," Deutsche Welle, September 5, 2016.

39 The refugee-processing facility in Guantánamo is unrelated to the U.S. military prison holding terrorism suspects.

to illegal immigration. State efforts to prevent maritime arrivals—in response to public disquiet often stoked (or even invented) by political rhetoric—too often run roughshod over the procedures established to distinguish refugees from those migrants not in need of international protection. Such efforts may also undermine the availability of international protection for refugees.

There are good reasons to safeguard the integrity of the asylum system that has offered protection to millions of refugees since it was established on a global basis in 1951. First, the public in a receiving country is unlikely to give refugees the welcome they need in order to rebuild their lives if people who claim to be refugees are seen to be abusing the system in large numbers. Second, the organized-crime networks that prosper from human smuggling and trafficking undermine the rule of law in origin, destination, and transit countries. (Most states have committed themselves to combating organized crime by acceding to the Palermo Protocols to the United Nations Convention against Transnational Organized Crime.) Third, and most important, people may be lured to put their lives in danger by traveling illegally by boat if they believe that the asylum system is so lax as to allow almost anyone to migrate to any country of his or her choice.

While these are all important reasons to protect the integrity of the asylum system, the system is put at risk when public officials paint all maritime migrants as “queue jumpers,” cheats, and criminals. Even those migrants who do not qualify for protection should be treated with dignity. Migrants may claim asylum in the genuine belief that they are refugees, or in the hope that the story they tell will persuade adjudicators that they are. For many migrants who have neither family ties in their desired destination nor sought-after skills to offer employers, asylum may appear to be the only way to access the “promised land.” This does not mean that they should be allowed to remain, but it does mean that they should be treated humanely.

The international politics of unauthorized maritime migration are also fraught with tensions in many cases, pitting countries of intended destination against origin and transit states, littoral states against interior ones, and flag states against intercepting states. Even as the divergent short-term interests of states make it difficult for them to cooperate on maritime migration, these interests are threatened by the lack of international cooperation. At the international level, too, states have suffered reputational damage after taking actions that are seen as inhumane or contrary to the spirit, if not the actual letter, of inter

national refugee law or the law of the sea—or that shift the burden of refugee protection onto poorer and less capable states.

VII. “Bad Actors” and the Manipulation of Rescue: Engineered Helplessness

The smugglers who organize unauthorized maritime migration do not make the distinction between refugees and nonrefugees. It is reasonable to believe that most people who bear the expense and run the risks of unauthorized maritime migration are extremely anxious to leave their home countries, even if they do not conform to the definition of a refugee in international law. Smugglers prey upon the desperation of would-be migrants and refugees, and often mislead potential clients about the prospects of reaching their desired destination and being allowed to stay there.

While some smugglers see themselves as agents performing a service for their clients—and do their best to deliver that service—the entry of criminal elements into the business puts many migrants in the hands of ruthless operators. Stories of migrants forced to disembark in deep waters offshore; jammed into unseaworthy boats; denied food, water, and breathable air; and thrown overboard or murdered by smugglers seem to be growing in frequency. For example, UNHCR reported that “On 15 July [2014], 29 people were found dead from apparent asphyxiation in the hold of a fishing boat, and details are emerging of a horrifying incident in which as many as 60 people were stabbed and thrown overboard as they sought to escape from the hold. A total of 131 people are missing and presumed dead from the incident, including a newborn baby.”⁴⁰ In September 2014, an even more horrifying incident was reported, in which smugglers deliberately sank a boat carrying as many as 500 migrants (including about 100 children). According to survivors interviewed by IOM officers, the migrants had refused to cooperate with smugglers’ instructions to board a smaller and less seaworthy boat to continue their journey; only 11 people survived.⁴¹ With a similar disregard for human life, smugglers abandoned at sea thousands of migrants and refugees from Bangladesh and Myanmar to avoid a crackdown by the government of Thailand in 2015. And in the

40 UNHCR, “Urgent European Action Needed to Stop Rising Refugee and Migrant Deaths at Sea” (press release, July 24, 2014).

41 Tara Brian and Frank Laczko, eds., *Fatal Journeys: Tracking Lives Lost during Migration* (Geneva: IOM, 2014).

Gulf of Aden, smugglers are so determined to avoid an encounter with Yemeni law enforcement that if one seems inevitable, they will simply throw their human cargo overboard (see Chapter 4).

The tactics of smugglers evolve as coastal defenses against them are strengthened. In the past, the most common maritime people-smuggling operations mirrored other kinds of smuggling, attempting to reach the coast of the destination country without being apprehended. Today, common tactics include deliberately drawing attention to dangerously unseaworthy boats carrying migrants, providing boats with only enough fuel to reach international waters in locations where rescue efforts are known to be common, or disabling a migrant boat as soon as a coast guard or search-and-rescue vessel approaches. These tactics transform an interception into a rescue and make it impossible to return the vessel to the point from which it set out. Employees of the smugglers or the migrants themselves are instructed to hole the vessel or disable its engine, rendering themselves in distress and in need of rescue.

Smugglers tend to be not only ruthless but opportunistic. They are often extremely well informed about the practices of coast guards and other law enforcement bodies as well as the mechanisms that trigger protection responses from states. Further, smugglers have been known to coach migrants in the behaviors and stories that are likely to gain them entry—and perhaps permission to remain—in a country of destination.

Because of its low risk (for the owners and managers of smuggling outfits) and high profits, people smuggling is an attractive business for many actors, from poor fishermen to multibillion-dollar criminal cartels. Survivors of one deliberately wrecked ship reported that they had paid US \$2,000 each for passage across the Mediterranean,⁴² putting the gross from that voyage alone at US \$1 million. While most people worldwide are smuggled through land borders and airports, those who travel by sea are put at greatest risk and are most dependent on a smuggler to arrange the voyage. The United Nations Office on Drugs and Crime reports that “though more migrant smuggling occurs by air, more deaths occur by sea.”⁴³

42 IOM, “IOM Says New Witnesses Provide Further Details of Mediterranean Shipwreck Tragedy” (press release, September 16, 2014).

43 United Nations Office on Drugs and Crime (UNODC), *Issue Paper: Smuggling of Migrants by Sea* (Vienna: UNODC, 2011), 12.

VIII. Policy Responses, Part I: Law Enforcement, Denial, Diversion, and Deterrence

Law enforcement efforts to arrest and prosecute people smugglers encounter a number of challenges. Smugglers who can be caught in the act are usually low-level operators and can easily be replaced, leaving unscathed the higher-level organizers of unauthorized sea voyages whose fingerprints on the crime can be difficult to detect. It may also be difficult to find witnesses who are willing to testify in court proceedings against smugglers. People smuggling is often just one of many business lines of loosely organized criminal organizations. When authorities crack down on people smuggling, the organizations responsible can simply lie low and concentrate on other activities until the pressure lifts or they figure out alternative routes or mechanisms. In addition, smuggling operations are often deeply interpenetrated with the local community (in a fishing village, for example), including local authorities.⁴⁴

In the face of such complexity, law enforcement efforts often depend on intelligence gathering with respect to intended boat departures. The U.S. government has conducted surveillance flights along the coast of Haiti to monitor boat building, for example. The Australian Minister for Immigration and Border Protection has emphasized the importance of cooperating with other states in the region, stating that “more than 85 percent of Customs and Border Protection detections at the border come from intelligence.”⁴⁵ Annual joint operations instigated by successive European Union presidencies have designated a two-week period for intensive interception of unauthorized migrants at and within EU borders; these operations are aimed “at weakening the capacity of organized-crime groups to facilitate illegal immigration to the EU and . . . to collect information, for intelligence and investigation purposes, regarding the main routes followed by migrants to enter the common area and the modus operandi used by crime networks to smuggle people toward the EU.”⁴⁶

44 Graeme Hugo, “The New International Migration in Asia: Challenges for Population Research,” *Asian Population Studies* 1, no. 1 (2005): 93-120.

45 Address by Scott E. Morrison, Minister for Immigration and Border Protection, Australian Government, to the Lowy Institute for International Policy, “A New Force Protecting Australia’s Borders,” Sydney, Australia, May 9, 2014.

46 Council of the European Union, “Joint Operations ‘Mos Maiorum,’” (Note from the Presidency to the Delegations, July 10, 2014).

Beyond straightforward law enforcement, attempts by states to reduce, or indeed stop, unauthorized maritime migration generally employ three mechanisms: (1) denial of access to the territory of the destination country, (2) diversion to other destinations or channels, and (3) deterrence. All three types of measures are designed to make the cost-benefit analysis for migrants so unfavorable that they abandon the attempt at a sea journey. Some policies overlap the three categories.

Denial of access to the coast of an intended destination requires significant investment in patrol capacity, as well as the ability to compel unauthorized vessels to alter their courses or abandon their journeys. Ships forced to return to their port of departure may simply wait for another moment to set sail. Law enforcement vessels sometimes tow unauthorized boats out of their territorial sea or contiguous zone into international waters or from the high seas into the territorial waters of the state from which they embarked. To make sure that unauthorized migrants can return to their departure point, authorities have repaired disabled vessels or offloaded passengers from unseaworthy boats into lifeboats and pushed them back toward the shore. Other times, intercepting authorities destroy boats that have been returned so that they cannot be used for another attempt. Unlike a border fence, a sea barrier is never fixed and requires continuous investment. U.S. Coast Guard patrols to deny migrants access to U.S. territory have been in place in the Caribbean since 1981, and have slowed but not stopped unauthorized maritime migration.

Diversion of maritime migrants takes two very different forms. The first seeks to direct migrants from unauthorized channels into legal ones by opening up opportunities to receive visas to people who otherwise would not be eligible. In October 2014, U.S. Citizenship and Immigration Services (USCIS) announced the creation of the Haitian Family Reunification Parole program, which would accelerate the arrival of Haitian family members of U.S. citizens and legal permanent residents. It focuses on would-be migrants with an approved family-based visa petition who might otherwise wait years for a slot to open. In announcing the program, which took effect in early 2015, the U.S. Deputy Homeland Security Secretary said, “The United States strongly discourages individuals in Haiti from undertaking life-threatening and illegal maritime journeys to the United States.”⁴⁷ Opening the U.S. H-2 visa categories (low-skilled temporary labor) to Haitians after the 2010 earthquake may have also served to deter some unauthorized maritime

⁴⁷ U.S. Citizenship and Immigration Services (USCIS), “DHS to Implement Haitian Family Reunification Parole Program” (news release, October 17, 2014).

migration, although this was probably not the primary intention. Meanwhile, EU Member States have discussed the creation of “humanitarian visas” for refugees in North Africa and the Middle East as an alternative to the need to undertake unauthorized migration to seek asylum in Europe.

A harsher diversionary tactic is to direct an unauthorized boat’s passengers to destinations other than the one intended. The U.S. practice of diverting U.S.-bound unauthorized migrants in the Caribbean to Guantánamo and then to a third country if they are found to be refugees, without the possibility of being resettled in the United States, is one example. Australia, too, has followed this practice, and offers fewer options for resettlement. Asylum seekers are sent to processing centers in Papua New Guinea and Nauru,⁴⁸ and, since 2013, Australia has made it clear that people found to be refugees through procedures in these countries will not be resettled in its territory. Instead, they have the choice of settling in Papua New Guinea or Nauru, being resettled in Cambodia, or waiting for the possibility of resettlement in another country or voluntarily deciding to return home (see Chapter 6).

The third mechanism for slowing or stopping unauthorized maritime migration is deterrence. The softer end of the spectrum of deterrence relies on dissuasion. For example, information campaigns (as implemented by the United States, Australia, and European countries in various contexts) explain the dangers of illegal maritime voyages, the ruthlessness of smugglers, the difficulties of living without papers in the destination country, the likelihood of apprehension, and the challenges to finding a job. Assessments of information campaigns do not indicate that they have a significant impact on unauthorized travel, however.⁴⁹ Asked how effective such campaigns were, one Malian migrant who attempted to travel to Spain on a flimsy rubber dinghy told *The New York Times*, “It can’t be worse than Mali. Europeans want to scare us away, but they don’t have a clue what kind of problems we leave behind.”⁵⁰

48 Government of Australia and Government of Papua New Guinea, “Regional Resettlement Arrangement between Australia and Papua New Guinea,” July 19, 2013.

49 See, for example, Maybritt Jill Alpes and Ninna Nyberg Sørensen, “Migrant Risk Warning Campaigns Are Based on Wrong Assumptions” (policy brief, Danish Institute for International Studies, Copenhagen, May 5, 2015).

50 Rafael Minder and Jim Yardley, “Desperation Fuels Trips of Migrants to Spain,” *The New York Times*, October 4, 2013.

On the hard side of deterrence policy is detention. Conditions in detention centers for unauthorized migrants are often harsh, as reported by numerous, highly critical reports by human-rights organizations.⁵¹ More important, however, confinement keeps migrants away from what is for many the primary goal of mobility: the chance to make a living.

Deflection, as described above is an effective form of deterrence. When migrants don't succeed in reaching their goal, word quickly gets back to intending migrants, their families, and communities that unauthorized travel by sea is not worth the risks and expense. By consistently substituting an undesirable location for the intended one, policymakers hope to discourage people from migrating without authorization. More importantly, by making it extremely difficult for smugglers to provide the service that they have promised, such policies disrupt their business models. Migrants will be unwilling to pay large sums to smugglers to reach a desired destination if they are likely to end up in another country where they have no ties or prospects.

Considerable evidence indicates that interception policies, too, work to deter unauthorized maritime arrivals, at least for as long as they are in place. In 2006, nearly 40,000 unauthorized boats arrived on Spanish territory, the majority in the Canary Islands. After Spain increased patrols off the coast of West Africa and stationed night-vision cameras along its own southern coasts, the number of boat arrivals dropped to 3,804 by 2012.⁵² Australia saw an even more dramatic decline within a single year after implementing Operation Sovereign Borders in September 2013. The operation aimed to deny unauthorized maritime migrants access to Australian territory by intercepting their boats and, where safe to do so, removing them from Australian waters. From a high of 48 boat arrivals in July 2013, just five arrived in October of the same year; there have been no arrivals since. (Passengers on an unauthorized vessel that sank in July 2014 were rescued and brought temporarily to the Australian mainland before being transferred to Nauru.)⁵³

51 See, for example, the collection of reports released by *The Guardian* detailing abuse, self-harm, and negligence in the Australian detention center on the island of Nauru. See Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, "The Nauru Files: The Lives of Asylum Seekers in Detention Detailed in a Unique Database," *The Guardian*, August 10, 2016.

52 Minder and Yardley, "Desperation Fuels Trips of Migrants to Spain."

53 Speech by Lieutenant General Angus Campbell, Australian Army, to the Australian Strategic Policy Institute, "Operation Sovereign Borders: Initial Reflections and Future Outlook," Barton, Australia, May 15, 2014.

The strict enforcement of policies to return unauthorized migrants to their countries of origin also functions to deter new arrivals. But such policies are far from comprehensive in most destination countries. When authorities contemplate returning migrants, various considerations—primarily humanitarian, legal, and political—often come to the fore. For example, children’s cases are meant to be decided on the basis of what is in the “best interests of the child,” and this standard may preclude returning children to the country they just escaped. Similarly, according to the Refugee Convention, refugees are not meant to be penalized for using illegal means to enter another country’s territory to seek asylum, nor are they to be sent back to a place where their lives or freedom would be in danger. But, as noted above, they are not infrequently deflected back to transit countries or subjected to perfunctory determination procedures that leave them vulnerable to refoulement.

In some countries, the presence of a politically influential diaspora or another type of support group may discourage politicians from implementing strict return policies. The United States’ “wet-foot/dry-foot” policy—which protects Cubans who manage to evade interception at sea and land on U.S. soil from deportation and gives them a fast track to permanent residence—is one of the few nonreturn policies for nonrefugees that is written into legislation. The policy encourages continued departures from Cuba because success, even if the sea patrols make it unlikely, brings such a great reward. But the policy also appears to have deflected more risk-averse Cuban migrants toward land routes (most of them via Mexico) that they can access via air or a relatively short sea voyage. Haitian migrants, on the other hand, are almost uniformly returned directly to Haiti and are routinely detained if apprehended on U.S. soil.

France has shown some reluctance to deport francophone Africans back to countries of origin in turmoil, even if they do not meet strict refugee criteria, perhaps because of domestic constituencies that vocally oppose such practices on humanitarian grounds. Moreover, deporting an unwilling migrant who is determined not to be moved is an expensive and unpleasant procedure, which authorities often seek to avoid. The conviction, even if based on slim anecdotal evidence, that if migrants can just reach the intended destination, they will be allowed to stay, is a powerful stimulant of unauthorized journeys. And yet states find it difficult to counter this through strict return policies. The decision to force an involuntary departure is not an easy one.

IX. Policy Responses, Part II: Rescue, Protection, and Burden Sharing

While many governments have pursued the three Ds of denial, diversion, and deterrence (as described above), others have opted to focus on (1) rescue, (2) the protection of refugees and the humane treatment of other migrants, and (3) the establishment of frameworks for multinational burden sharing. Italy's widespread search-and-rescue operation in the Mediterranean, Mare Nostrum, is a prime example. It was instituted in October 2013, following a shipwreck off Lampedusa, and remained in operation for 14 months, despite the objection of some EU Member States that saw it as a magnet for unauthorized maritime migration. In fact, the surge in maritime migration across the Mediterranean had started at least three months before Mare Nostrum was put in place and continued after it ended.

At a cost of 9 million euros per month, Mare Nostrum could not be sustained by Italy alone. What replaced it was a much smaller operation mounted by Frontex. Confined to patrols within 30 miles of the European coast and with one-third the financial resources of Mare Nostrum and a fraction of its maritime assets, Operation Triton did not have an explicit search-and-rescue mandate. Its vessels would engage in rescue if they encountered people in distress, but its remit did not cover most of the migration routes across the Mediterranean. It took another terrible tragedy, in April 2015, to galvanize further EU response. At least 700 people are reckoned to have died in the worst single shipwreck in modern times, leaving only 29 survivors.⁵⁴ In the aftermath, the resources devoted to Operation Triton increased to almost the level devoted to Mare Nostrum, and national assets from EU Member State navies and coast guards (including those from Germany, Greece, Ireland, Italy, and the United Kingdom) were deployed in the Mediterranean for search-and-rescue operations. Migrant crossings surged in the spring of 2015; 5,000 to 6,000 people were rescued each weekend as the weather improved. Despite the calmer weather and the enhanced search-and-rescue capacity, the death toll continued to rise, reaching 3,763 by the end of the year.⁵⁵

54 Alessandra Bonomolo and Stephanie Kirchgaessner, "UN Says 800 Migrants Dead in Boat Disaster as Italy Launches Rescue of Two More Vessels," *The Guardian*, April 20, 2015.

55 IOM, "Missing Migrants Project – Latest Global Figures," accessed September 10, 2016.

The mounting death toll in the Mediterranean between 2013 and 2015 prompted many—including the presidents of Malta and Italy, Pope Francis, and a quartet of the most senior international officials dealing with migration—to call for further action.⁵⁶ The Pope’s appeal for moral action based on solidarity with migrants generated one of the more innovative responses. Private citizens based in Malta created and funded the Migrant Offshore Aid Station (MOAS), which operates a private rescue ship, the *Phoenix*, in the Mediterranean Sea and, for one season in 2016, in the Andaman Sea.⁵⁷ Even before its first official mission began, in August 2014, *Phoenix* rescued a fisherman and his 5-year-old son from a boat whose engine had stopped working. *Phoenix* and its crew of 16 operated the 40-meter ship over 60 days at sea in its first summer, at a cost (including the vessel and its equipment) of several million euros.⁵⁸ More than 3,000 people were saved in the summer of 2014. By its second anniversary, MOAS had been involved in the rescue of about 25,000 migrants in the Mediterranean, and had been joined by several other private rescue vessels. Doctors without Borders also joined MOAS to provide medical care on board and assistance to migrants following rescue.⁵⁹

In the Red Sea and Gulf of Aden, the Yemeni Coast Guard cooperates with UNHCR to rescue migrants and apprehend smugglers. Its vessels bring migrants ashore, where they are provided with medical treatment, food, water, and temporary shelter. Somali refugees receive *prima facie* recognition⁶⁰ from the Yemeni authorities. UNHCR runs refugee status-determination procedures for arrivals of other nationalities who wish to apply for asylum—although many prefer to avoid registration and move on as soon as they can to look for work, primarily in Saudi Arabia. Saudi Arabia, meanwhile, is constructing a fence along the more traversed sections of the Yemeni border to deny unauthorized access to

56 For the latter, see UNHCR, “Joint Statement on Mediterranean Crossings” (press release, April 23, 2015).

57 BBC News, “Malta: Private Migrant Rescue Boat Saves Fishermen,” BBC News, August 26, 2014.

58 *The Malta Independent*, “First MOAS Mission on Wednesday, Fisherman and Young Son Rescued,” *The Malta Independent*, August 25, 2014.

59 Doctors Without Borders, “MSF and MOAS to Launch Lifesaving Operation for Migrants in Mediterranean” (press release, April 9, 2015).

60 Migrants are granted *prima facie* recognition as refugees when a receiving state acknowledges the severity of conditions in their country of origin (or, in the case of stateless persons, their country of habitual residence) and offers refugee status without the need to complete an individual refugee status-determination process.

Saudi territory and has expelled nearly 1 million unauthorized migrant workers since 2012, including about 150,000 from Ethiopia.⁶¹

The humanitarian actions of rescue and protection on national territory present a conundrum to countries such as Italy and Yemen, which are seen by most migrants as transit countries en route to more desirable destinations such as Germany, Sweden, and Saudi Arabia. This has created tension in some cases. For example, several top European destinations accused Italy of not being vigilant about registering and fingerprinting migrants rescued by *Mare Nostrum* as required by European regulations in order to avoid its responsibility (as the first point of entry into the European Union) to consider their asylum applications.

A third policy response puts rescue and protection in a broader framework of international cooperation, by seeking other countries to share the consequences of rescue and interception. Burden sharing is a form of international cooperation in which states voluntarily take on responsibility for refugees or migrants who, under international law, would fall under the responsibility of other states. Cooperation of this kind on maritime migration poses particular challenges. The responsibility to protect refugees is often interpreted differently across states. The burden (for it is often seen in those terms) falls much more heavily on some countries than on others by accident of geography. Other states may volunteer to share these burdens, but there is no legal obligation to do so—although the 1951 Refugee Convention (Article 35) does obligate states to cooperate with UNHCR. The same reluctance to accept or share responsibility also comes into play when refugees are rescued at sea, especially if the flag state of the rescuing ship is poor or overburdened. In the case of interception by a capable state, it may be more difficult to convince other states to share the responsibility of protection.

- The mechanisms of burden-sharing are many and varied, but tend fall into one of four categories:
- Permission to relocate migrants or refugees to a particular state's territory
- Provision of technical assistance in managing flows and establishing legal and institutional frameworks
- Financial assistance in the care of migrants in general and protection of refugees in particular

61 Benno Muchler, "Ethiopian Migrants Expelled by Saudis Remain in Limbo Back Home," *The New York Times*, January 7, 2014.

- Common frameworks for dealing with refugees and asylum seekers, often including an agreed upon division of labor among the participating states.

One example of burden sharing through physical relocation is a 2007 agreement between the U.S. and Australian governments to transfer refugees intercepted at sea by one country for settlement in the other.⁶² Australia agreed to resettle 40 Cuban refugees as early as 1981. Later formalized under a U.S.-Australia Mutual Assistance Arrangement, the two governments agreed to resettle up to 200 refugees processed in the other country every year. Both governments feared that providing settlement in their own territory would draw more people to embark on a dangerous, unauthorized journey—and were under political pressure to halt inflows. Stopping short of refoulement, the governments believed they could disrupt this magnet effect by preventing the few who managed to pass the high hurdle of refugee recognition from reaching their desired destination. In April 2010, *The Australian* reported a suspected “swap” of three Cuban refugees held by the United States for 28 Tamil refugees rescued by the customs ship *Oceanic Viking*.⁶³

Although the numbers exchanged under this arrangement are small, the idea that even *bona fide* refugees cannot choose their destination is important to the U.S., Australian, and EU governments, among others. The U.S. government will not permit refugees from Cuba and Haiti interdicted at sea to settle in the United States, even after U.S. authorities have determined their claims to be valid. Instead, the refugees are held in a facility at the U.S. naval base in Guantánamo, Cuba until a third country agrees to accept them.⁶⁴ Australia has made agreements with Cambodia, Nauru, and Papua New Guinea to resettle refugees in these countries. And the Dublin Regulation allows EU Member States to return asylum seekers to their first point of entry into the EU space.

Many countries that are on the front lines of unauthorized maritime migration flows, whether floods or trickles, lack the infrastructure and administrative capacity to adjudicate asylum claims and provide care to refugees and asylum seekers. Wealthier states often provide technical assistance to reinforce (or in some cases, create) this capacity, as European countries have in North African states such as Morocco. In other cases, UNHCR provides assistance or, in the absence of a national

62 Rob Taylor, “U.S. and Australia Strike Refugee Exchange Deal,” Reuters, April 17, 2007.

63 Paul Maley and Paige Taylor, “Cuban Refugees from US Arriving Here in Exchange for Tamils,” *The Australian*, April 6, 2010.

64 Cath Hart, “Refugee Swap Not Binding, Says US,” *The Australian*, April 20, 2007.

framework, will process asylum claims directly. In Indonesia, for example, UNHCR processes asylum claims and provides protection, while IOM runs facilities to house migrants while they await status determination and either repatriation or resettlement. Australia funds much of the cost of these operations under a tripartite arrangement with Indonesia and IOM. As of May 2014, more than 10,000 refugees and asylum seekers were in Indonesia, with nearly 17 percent in 13 detention centers located across the country.⁶⁵

The largest-scale incidence of burden sharing to date occurred in the aftermath of the Vietnam War, as large numbers of refugees left Vietnam by boat (see Chapter 3). Many were attacked by pirates en route; others were endangered by bad weather and unsafe, overcrowded vessels. Hundreds of thousands made their way to Southeast Asian countries that refused to consider them for permanent settlement. In 1979, the United Nations convened a groundbreaking conference of international stakeholders in Geneva.⁶⁶ As a result, worldwide resettlement commitments more than doubled the following year. Participating countries (with guidance from UNHCR) negotiated a number of agreements to address the particular circumstances of migrants at sea—many of whom reported being bypassed by ships that refused to respond to their distress. In particular, under the DISERO program that began in 1979 (DISERO being a derivation of “Disembarkation Resettlement Offers”), several countries agreed to accept any Vietnamese refugee rescued at sea by a ship of a country that was not itself participating in the resettlement of these refugees. Additionally, under a companion program begun in 1985, called Rescue at Sea Resettlement Offers (RASRO), 15 countries pledged to resettle a specified number of the refugees rescued at sea.⁶⁷ At the same time, an orderly departure program (ODP) was put in place to give people a safer, managed alternative to dangerous sea journeys. As the pace of resettlement exceeded the rate of boat arrivals, government officials were optimistic that the crisis had passed.

However, in the late 1980s, departures from Vietnam again surged, in part because of drought in North Vietnam and the hardships faced amid the country’s ongoing political and economic transitions. Most of the

65 Vivian Tan, “Tricked by Smugglers, It’s Sink or Swim for Afghan Youth” (UNHCR news release, May 16, 2014).

66 W. Courtland Robinson, “The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck,” *Journal of Refugee Studies* 17, no. 3 (2004): 319–33.

67 USCIS, “This Month in Immigration History: July 1979,” accessed September 21, 2016.

people making up these flows did not conform to the 1951 Convention definition of a refugee. In response, the Comprehensive Plan of Action (CPA) was established in 1989 to handle the outflows, particularly the hundreds of thousands of Vietnamese “boat people.” One of the goals of the CPA was to resettle—in an orderly, organized manner—those refugees who could neither remain in other Southeast Asian countries nor return to Vietnam, in order to avoid another mass departure by boat.⁶⁸ Over time, more than 1 million refugees were resettled in Western Europe, North America, Australia, and New Zealand. Those who had landed in states in the region and were found not to be refugees were returned to Vietnam.⁶⁹ As a result of the CPA, the number of boat departures dropped considerably, and the plan is generally thought to have been a success. The Indochinese refugee experience remains the outstanding example of burden sharing connected with unauthorized maritime migration.

No recent experiences come close to the scale of the burden-sharing experience in Indochina. Echoes of the experience can be detected in the insistence by Indonesia and Malaysia in 2015 that, in return for agreeing to shelter the migrants and refugees from Myanmar and Bangladesh stranded at sea, the boat arrivals would have to be resettled elsewhere within a year of arrival. The European approach to unauthorized maritime migration from the 1990s to the present, as governed by the Dublin Regulation, seems almost the reverse of the post-Vietnam experience: rather than relieving the pressures of boat arrivals on frontline states (in this case Greece and Italy), the terms of the Dublin agreement allow EU Member States to return refugees who have moved within Europe to the EU Member State in which they first arrived, unless they have family ties in the state to which they moved. Meant to deter migrants from filing asylum applications in multiple states (“asylum shopping”), it has left the littoral states of the northern Mediterranean to cope with at least three overlapping waves of boat arrivals. First came migrants fleeing the Balkan wars of the early 1990s through Albania and Greece across the Adriatic Sea (as well as by land), followed by large numbers from sub-Saharan Africa transiting through Libya. The most recent wave was prompted by the transitions following

68 Robinson, “The Comprehensive Plan of Action.”

69 Later programs (such as the Humanitarian Resettlement Program and the McCain Program) were put in place by agreements between the U.S. and Vietnamese governments that allowed people who had missed the September 30, 1994 application deadline for the Orderly Departure Program (ODP) to apply for resettlement in the United States. The Resettlement Opportunities for Vietnamese Returnees (ROVR) program provided a second chance at resettlement for people who had been returned under ODP.

the Arab Spring, war and repression in sub-Saharan Africa, and—dominating recent movements—the Syrian civil war.

The limits to burden sharing came into sharp focus with the dramatic increase in boat arrivals across the Mediterranean between 2013 and 2015. Although border management has been a cooperative venture in the European Union since the creation of Frontex in 2004, primary responsibility for border control and for processing boat arrivals still rests with individual states.⁷⁰ According to UNHCR, nearly 85 percent of the estimated 165,000 unauthorized maritime arrivals to Europe in 2014 arrived in Italy, whose Mare Nostrum operation had rescued about 150,000 people by the time it ended on October 31, 2014.⁷¹ In 2015, the numbers of Mediterranean crossings soared, as the traffic shifted from the central route from Libya to Italy toward the much shorter crossing from Turkey to the Greek islands. More than 1 million migrants crossed the Mediterranean in 2015.⁷²

After the huge shipwreck in April 2015 that killed approximately 800 migrants, and the enhanced rescue operations that followed, the European Commission proposed an obligatory distribution scheme for maritime arrivals, but EU Member States could not reach a consensus on its terms. Several Member States were simply unwilling to participate, leaving Greece, Italy, and the two most popular onward destinations, Germany and Sweden, with the great majority of the migrants.

An unshared burden can lead to further disorder in migration corridors. Countries of first asylum and frontline littoral states, overwhelmed by growing numbers of refugees and unauthorized maritime arrivals, may resort to pushbacks to even less capable countries or tolerate unauthorized departures to other countries. Transit countries

70 Frontex is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, established by EU Council resolution on October 26, 2004. Currently, 26 states, not all of them EU Member States, are members of Frontex, which coordinates the external border controls of the states belonging to the Schengen area. The 26 states of the Schengen area have abolished all internal borders in favor of a single external border. Common rules and procedures are applied with regard to visas for short stays, asylum requests, and border controls. See EU-Lex, “The Schengen Area and Cooperation,” updated August 3, 2009. The Schengen area has 44,000 kilometers (km) of external sea borders (compared to only 9,000 km of external land borders). See Frontex, “Roles and Responsibilities,” accessed September 10, 2016.

71 UNHCR, *Central Mediterranean Sea Initiative: So Close, Yet So Far from Safety* (Geneva: UNHCR, 2014).

72 IOM, “Mixed Migration Flows in the Mediterranean and Beyond, Reporting Period 2015,” accessed September 21, 2016.

may suffer from growing lawlessness, sparked by the criminal elements involved in human smuggling (but who do not confine themselves to that line of business). Although the costs of failure are high, effective burden sharing requires an act of will and a commitment of resources that many countries seem unable to muster—at least until a crisis is very nearly out of control.

X. Conclusions: A Wicked Problem

Unauthorized maritime migration surges and retreats in response to circumstances—conflict, repression, political turmoil, and economic decline—in countries of origin, as well as conditions and policy responses in the desired countries of destination. Paradoxically, some of the states that take the hardest lines on maritime migration, such as the United States and Australia, have the most open immigration policies overall. But they insist on choosing, rather than being chosen by, immigrants. These states set the rules of entry, and deal harshly with people who attempt to violate those rules—especially those who arrive by sea.

The second decade of the 21st century has seen surges in maritime migration in several regions: the Mediterranean, the Bay of Bengal, the Gulf of Aden/Red Sea, the southern Indian Ocean approaches to Australia, and the Caribbean. Such movements present daunting challenges to states seeking to reconcile the sovereign control of their borders with international obligations to protect refugees and to treat all people humanely and with dignity. Australian policy, for instance, has brought maritime arrivals under control, at least for the time being. But this control has come at a high cost in terms of financial expenditure, the erosion of protection mechanisms, and the reputation of the country.

Unauthorized maritime migration is everywhere characterized by complexity. The multiplicity of state- and nonstate actors, the mixed flows of refugees and nonrefugees, the overlapping and sometimes contradictory legal rulings, the fluctuating state policies, the secondary movements of people from countries of first asylum, and the constantly shifting parameters of sources, routes, and destinations—all these factors and more make maritime migration an extremely difficult issue to resolve. An apparent solution to the problem in one setting is likely to reflect not true resolution but deflection or diversion—a process of “squeezing the balloon” so that the problem emerges or intensifies elsewhere. The construction of a 7.5-mile border fence between Turkey

and Greece in 2012, for example, all but stopped migration across the land border but resulted in a surge in maritime migration across the Aegean Sea between the Turkish coast and the nearby Greek islands. Greek police reported that maritime arrivals doubled in the first six months of 2014 to more than 25,000, even as unknown numbers went undetected.⁷³

Marie McAuliffe and Victoria Mence have suggested that unauthorized maritime migration displays many of the characteristics of a “wicked problem,” borrowing a term used by urban planners to describe a complex, hard-to-resolve social problem.⁷⁴ The originators of the term, Horst Rittel and Melvin Webber, identified two of the major challenges in confronting wicked problems as (1) defining the problem and (2) identifying solutions—or, in their words, “finding where in the complex causal networks trouble really lies” and then “identifying the actions that might effectively narrow the gap between what is and what ought to be.”⁷⁵ Defining the problem is difficult because wicked problems are both causes and symptoms of other problems—and, like the blind men and the elephant—the explanation of the problem depends on the perspective of the observer. Unauthorized maritime migration is intimately connected to poverty, repression, and violence in migrants’ countries of origin and to the growth of organized crime, the perception of disorder in destination countries, the erosion of international norms, and dozens of other equally wicked problems. And such problems, Rittel and Webber point out, are not likely to be definitively solved, “but only re-solved—again and again.”⁷⁶ This implies that states will have to learn to live with imperfection, and engage in a continuous process of trial and error.

Policymakers need better tools to make that process more productive. These may include:

1. Better collection and sharing of data on maritime migration would solidify the evidence base for policymaking. The Regional Mixed Migration Secretariat (RMMS) for the Horn of Africa-Yemen region, established in 2011, is a useful model for

⁷³ *The Economist*, “Migration into Europe.”

⁷⁴ Marie McAuliffe and Victoria Mence, “Global Irregular Maritime Migration: Current and Future Challenges” (occasional paper 07/2014, Irregular Migration Research Programme, Department of Immigration and Border Protection, Government of Australia, Canberra, April 2014).

⁷⁵ Horst W. J. Rittel and Melvin M. Webber, “Dilemmas in a General Theory of Planning,” *Policy Sciences* 4, no. 2 (1973): 155–69, 159.

⁷⁶ *Ibid.*, 160.

organizing data collection and research on regional migration, including migration by sea. States could also benefit from sharing intelligence findings on the involvement of organized crime in the smuggling or trafficking of migrants.

2. Better evidence and analysis of the causes of maritime migration and the motivations of migrants would help to define the nature of the problem. War, poverty, and repression are undoubtedly root causes, but the patterns of boat departures do not map on to them as closely as one might expect. For example, the average number of Sri Lankan boat arrivals in Australia held steady from 2008 to 2011, at fewer than 500 per year. In 2012, however, the number jumped to about 6,400. No other country experienced this kind of increase, suggesting that conditions in Sri Lanka were not the determining factor.⁷⁷ What caused the surge? The decision to migrate illegally is complex. In addition to their own personal situations, migrants take into account the nature of border protection regimes, the costs of clandestine travel, the danger of the voyage, the presence of a known community (perhaps including family or friends) at the intended destination, the availability of rescue, the chances of being allowed to stay, and the likelihood of being able to earn a living. Information about these and other factors is transmitted with great speed and variable accuracy. Understanding the sources of information on which migrants rely is an important part of understanding the dynamics of migration.
3. Monitoring the impact of policies can establish feedback loops that help policymakers understand whether their actions are having the intended results, or producing unintended and undesirable consequences. Better data can help establish correlations, but not necessarily causation. Interviewing migrants who are rescued or intercepted at sea as soon after they disembark as possible can offer valuable insights, provided it is done with appropriate sensitivity to their experiences and their potential need for protection.
4. These three tools are all helpful in the difficult task of defining the problem of maritime migration. Identifying the goals of policy in this area and the actions that might bring them

⁷⁷ Dinuk Jayasuriya and Marie McAuliffe, "Placing Recent Sri Lankan Maritime Arrivals in a Broader Migration Context" (occasional paper 02/2013, Irregular Migration Research Programme, Department of Immigration and Border Protection, Government of Australia, Canberra, October 2013).

closer is even more challenging, not least because of the number of actors involved and their competing priorities. Identifying policy goals, even within a single government, requires cooperation across departments and agencies with varying objectives and operating procedures. Identifying common objectives among destination, transit, and origin countries is much more complex. Complex, crosscutting problems like unauthorized maritime migration lend themselves to a task force or standing committee, in which multiple perspectives can be represented at the national or regional level. The rare breakthrough in addressing maritime migration at the global level has tended to come out of a crisis-driven conference format, as with the Comprehensive Plan of Action or the amendments to the SARS and SOLAS conventions relating to disembarkation.

The issues surrounding maritime migration that are most in need of breakthroughs in international cooperation include:

1. A global recommitment to the universal norms of rescue at sea, with particular emphasis on further development of burden sharing on a regional or global basis so that frontline states do not bear a disproportionate share of responsibility for migrants and refugees who reach their shores.
2. Provision of international protection to refugees who travel by boat, and respect for the dignity, human rights, and basic needs of other maritime migrants.
3. The opening of channels for legal migration as an alternative to clandestine sea journeys.
4. Measures to oppose the involvement of organized criminal organizations in migrant smuggling.

These problems are not subject to technical solutions. The persistence and complexity of the problem motivated UNHCR to make “Protection at Sea” the theme of a global initiative in 2014-15. Its ambition to reduce loss of life and abuse of unauthorized migrants traveling by sea, and to make sure that states’ responses to maritime migration are protection-sensitive continues. Rescue at sea was also one of the themes of the United Nations General Assembly High-Level Meeting on Large Movements of Refugees and Migrants held on September 19, 2016. The outcome document of the summit said: “We commend the

efforts already made to rescue people in distress at sea. We commit to intensifying international cooperation on the strengthening of search and rescue mechanisms. We will also work to improve the availability of accurate data on the whereabouts of people and vessels that are stranded at sea.”⁷⁸ Maritime migration also remains high on regional cooperation agendas, whether in Europe, the Americas, Australasia, or the Horn of Africa.

One-dimensional responses are unlikely to be effective in addressing the whole phenomenon of maritime migration and have been seen to produce unintended, and often unwelcome, consequences. Governments may choose to live with these. Alternatively, they may adopt a set of responses that is tactically flexible and capable of adapting to changing circumstances while remaining strategically anchored in rule of law, the imperative of safety, and respect for human dignity.

⁷⁸ United Nations General Assembly, “Outcome Document for 19 September 2016 High-Level Meeting to Address Large Movements of Refugees and Migrants,” Draft for Adoption, July 29, 2016.

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